

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN DONTE LEWIS,

Defendant-Appellant.

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UNPUBLISHED

October 28, 2003

No. 244481

Wayne Circuit Court

LC No. 01-010587-01

Before: Bandstra, P.J., and Hoekstra and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right from nonjury convictions of armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony, MCL 750.227b, for which he was sentenced to prison terms of twelve and a half to twenty-five years and two years, respectively. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal is that the prosecutor committed misconduct by improperly introducing other acts evidence. The issue has not been preserved because defendant did not raise a timely objection at trial. Therefore, review is precluded unless defendant establishes plain error that affected the outcome of the trial. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999); *People v Aldrich*, 246 Mich App 101, 110; 631 NW2d 67 (2001).

Under MRE 404(b)(1), evidence of other crimes, wrongs or acts is not admissible to prove the character of a person to show action in conformity therewith. Thus, if the sole purpose in offering the evidence is to show the defendant's propensity for particular conduct based on his character as inferred from other wrongful conduct, it is not admissible. *People v Gimotty*, 216 Mich App 254, 259; 549 NW2d 39 (1996). It is admissible, however, for another purpose, "such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident" if that purpose is material. MRE 404(b)(1). The prosecutor must give notice of the intent to offer other acts evidence. MRE 404b(2). There is no evidence that such notice was given in this case.

After defendant committed the instant offense, he was arrested nearby for a separate offense. The prosecutor called the arresting officer, Armando Huffman, who testified that he was dispatched to Loretto Street to investigate a report of shots fired. Defendant objected to any additional testimony and the officer was excused. It does not appear that Huffman was called to

provide other acts evidence. Rather, it appears from the prosecutor's statement in response to defendant's objection that Huffman was offered as a res gestae witness of sorts. "[P]rosecutorial misconduct cannot be predicated on good-faith efforts to admit evidence. The prosecutor is entitled to attempt to introduce evidence that he legitimately believes will be accepted by the court, as long as that attempt does not prejudice the defendant." *People v Noble*, 238 Mich App 647, 660-661; 608 NW2d 123 (1999) (citations omitted).

Even assuming the evidence was improper, it is highly unlikely that the error was prejudicial. First, the evidence of the subsequent crime was not actually introduced, there was no testimony that defendant was the person who fired the shots which caused Huffman to go to Loretto Street, and there was no evidence that defendant committed any crimes on Loretto Street. Second, this was a bench trial in which the judge is presumed to have followed the law and to have ignored errors and decided the case on properly admitted evidence. *People v Jones*, 168 Mich App 191, 194; 423 NW2d 614 (1988); *People v Farmer*, 30 Mich App 707, 711; 186 NW2d 779 (1971). Given that the trial judge pointed out that Huffman's continued testimony was likely to create a problem with respect to MRE 404(b) and sustained defendant's objection on that basis and did not make reference to any of Huffman's testimony in rendering his decision, it is unlikely that any error affected the outcome of the trial.

Affirmed.

/s/ Richard A. Bandstra  
/s/ Joel P. Hoekstra  
/s/ Stephen L. Borrello